

aa 4  
1 14. (New) The cosmetic powder according to claim 2, comprising said powder in a  
2 quantity between about 60 and 90% by weight.

1 15. (New) The cosmetic powder according to claim 3, comprising said poly alpha  
2 hydroxy acids in a quantity between about 0.1 and 20% by weight.

1 16. (New) The cosmetic powder according to claim 7, comprising said coating in a  
2 quantity between 0.001 and 80% by weight.

1 17. (New) The cosmetic powder according to claim 16, comprising said coating in  
2 a quantity between about 1 and 30% by weight.

#### REMARKS

The foregoing amendments and these remarks are in response to the Office Action dated June 05, 2001. A request for a two month extension of time, together with the appropriate fee for the extension of time, is submitted with this amendment. At the time of the Office Action, Claims 1-13 were pending in the application. Claims 1-13 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-3 and 9-11 were rejected under 35 U.S.C. § 102(e). Claims 1-13 were rejected under 35 U.S.C. § 103(a).

Turning first to the rejections under 35 U.S.C. § 112, second paragraph, claims 1, 3, 10, 12, and 13 were rejected for the inclusion of the term "hydroxi". These claims have been amended to substitute "hydroxy" for "hydroxi". Claim 3 was rejected for the inclusion of the phrase "characterised in that it comprises". Claims 1-8 and 10-13 have been amended to remove the term "characterised in that". Claim 8 was rejected based upon the presence of the phrase "vitamins/amino acids." This phrase has been replaced with the term "at least one of vitamins and amino acids". Claims 7 and 12 were rejected for being vague due to the presence of the phrase "functional substances". In particular, the Office Action asserts that the specification does not define the phrase. Notably, however, this phrase is defined in the specification at page 4, line 5 and line 19. Based upon the foregoing, withdrawal of the § 112 rejections is believed appropriate, and is

th refore r spectfully requested.

Prior to turning to the rejections on art, a brief review of Applicant's invention is appropriate. One aspect of Applicant's invention relates to a cosmetic powder with which a coating is associated. The powder includes one or more of the following: excipients; pigments; silicones; and silicone derivatives. The coating includes a polymer and/or copolymer belonging to the poly alpha hydroxy acids family.

Turning now to the rejections on art, claims 1-3 and 9-11 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,182,783 to Benoit et al (Benoit). Claims 1-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,879,688 to Coury et al (Coury) in view of U.S. Patent No. 3,969,547 to Isawa et al (Isawa) and Benoit.

Applicant respectfully submits that claim 1 is not taught or suggested by the prior art. Notably, the disclosure of Benoit is limited to the microencapsulation of active substances. As stated in Benoit at column 1, lines 25-39, a goal of microencapsulation is to protect or mask an active substance, so that it may be released at an appropriate time. Column 6, lines 43-48, of Benoit further states that because of low surface energy, the microcapsules of Benoit exhibit a barrier effect which slows down deterioration in the coating layer and the diffusion of the active substance towards polar environments, such as physiological fluids and aqueous formulations. Moreover, the only cosmetic products listed at column 5 of Benoit, self-tanning and anti-UV products, contain active substances. In stark contrast, in the present invention, the particle being coated is not an active material. The poly alpha hydroxy acids in the coating comprise the active substance, which is coated on an inactive powder, such as a pigment used in a cosmetic. Thus, with the present invention, a cosmetic powder such as an eyeshadow can be given active properties by the coating substance. As stated at page 2, lines 15-19, of Applicant's specification, the use of the alpha hydroxy acids in make-up and in particular with anhydrous products (powders) is very difficult because the alpha hydroxy acids are water soluble and in addition are potentially irritating. Thus, Benoit does not teach or suggest the invention as recited by claim 1.

The method disclosed by Benoit, involves the use of supercritical CO<sub>2</sub> in an

autoclave. This complex method is necessitated, at least in part, by the need to completely encapsulate the active substance by the coating. Significantly, however, this limitation is not necessary in the present invention. Additionally, Benoit only teaches the use of ethyl acetate as a solvent with acrylic polymers (see column 5, lines 40-44). Third, Benoit does not teach the use of a slurry or spray. Fourth, Benoit does not teach the evaporation of the solvent, but the cycling of a CO<sub>2</sub>/solvent mixture out of the pressurized autoclave, removal of the solvent in a separator, and recycling the CO<sub>2</sub> together with fresh CO<sub>2</sub> back into the autoclave to remove further solvent. Thus, Benoit does not teach or suggest the invention as recited by claim 10.

Turning to the disclosures of Coury and Isawa, Coury does not relate to coated cosmetic powders, but to the provision of hydroxy acid polymer conjugates in a pharmaceutically or cosmetically acceptable vehicle. In the case of a powder, it is only the incorporation of the hydroxy acid group in the conjugate which permits delivery to the skin of the active ingredient (see for example column 2, lines 33-39). There is no coating of any substance with the conjugated active ingredient. Instead, Coury simply lists a large number of vehicles with which the active ingredient may be mixed. Isawa provides a process of preparing polymer coated particles of a particulate solid, such as metal and alloy, suitable for application to inorganic substrates by fluid bed coating, electrostatic spraying or electrocoating. (see for example column 1, lines 38-48). Isawa results in the formation of hard films over all the surfaces of the individual solid particles (see column 2, lines 24-26). This method would clearly not be suitable for the preparation of cosmetic powders, and Applicant submits that this reference describes non-analogous art. For the reasons set forth above, Applicant submits that the disclosures of Coury and Isawa would not be combined by a person skilled in the art, nor would such a combination lead to a product or process having the features of claims 1 and 10.

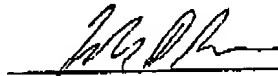
Based upon the foregoing, claims 1 and 10 are believed to be in condition for allowance. Claims 2-9 and 11-17 are also believed to be allowable because of their reliance on allowable base claims, and because they contain features not taught or suggested by the prior art.

Applicant has made every effort to present claims which distinguish over the prior

art, and it is believed that all claims are in condition for allowance. Nevertheless, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicant respectfully requests reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

Date: 11/5/01



J. Rodman Steele, Jr.  
Registration No. 25,931  
Mark D. Passler  
Registration No. 40,764  
Akerman, Senterfitt & Eidson, P.A.  
222 Lakeview Avenue, 4th Floor  
Post Office Box 3188  
West Palm Beach, FL 33402-3188  
Telephone: (561) 653-5000

Docket No. 1610-82

## PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of AVALLE

Application No. 09/800,463

Examiner: WILLIS, M.

Filed: March 08, 2001

Group Art Unit: 1619

For: COATED COSMETIC POWDER

ATTACHMENT TO AMENDMENT SHOWING MODIFICATIONS

CERTIFICATE UNDER 37 CFR §1.8(a)  
I hereby certify that this correspondence is being  
deposited with the U.S. Postal Service as First Class mail  
in an envelope addressed to Commissioner for Patents,  
Washington, D.C. 20231 on 11/5/01

[Signature] Reg. No. 40,764

Box Fee Amendment  
Commissioner for Patents  
Washington, D.C. 20231

Sir:

In accordance with 37 CFR §1.121, the modifications made to the application  
are as follows:

IN THE CLAIMS

- 1           1. (Amended) A [C]cosmetic powder to which a coating is associated  
2 [characterised in that] wherein:  
3           said powder comprises at least one of the group consisting of excipients,  
4 pigments, silicones and silicone derivatives; and  
5           said coating [includes] comprises at least one polymer[s] or co-polymer  
6 belonging to the poly alpha hydrox[il]y acids family.

1           2. (Amended) The [C]cosmetic powder according to claim 1, [characterised in  
2 that it comprises] comprising said powder(s) in a quantity [comprised] between 0.1  
3 and 99.9% by weight.

1           3. (Amended) The [C]cosmetic powder according to claim 1, [characterised in  
2 that comprises] comprising said poly alpha hydrox[il]y acids in a quantity [comprised]  
3 between 0.0001 and 60% by weight.

1           6. (Amended) The [C]cosmetic powder according to claim 1, [characterised in  
2 that] wherein said coating includes poly DL-lactide.

1           7. (Amended) The [C]cosmetic powder according to claim 1, [characterised in  
2 that] wherein said coating includes functional substances.

1           8. (Amended) The [C]cosmetic powder according to claim 1, [characterised in  
2 that] wherein said coating includes at least one of vitamins and [/] amino acids.

1           10. (Amended) A [P]process for the preparation of a cosmetic powder  
2 comprising the [following stages] steps of:

3           [- ]preparation of a powder phase, wherein said powder comprises at least one  
4 of the group consisting of excipients, pigments, silicones and silicone derivatives;

5           [- ]preparation of an alpha hydrox[il]y acids polymer or co-polymer phase[.];

6           [- ]mixture of said powder phase and of said alpha hydrox[il]y acids polymer or  
7 co-polymer phase with a solvent in slurry or spray[.]; and

8           [- ]evaporation of the solvent.

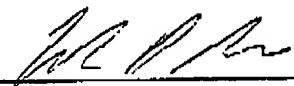
1 11. (Amended) The [P]process according to claim 10, [characterised in that]  
2 wherein said solvent is ethyl acetate.

1 12. (Amended) The [P]process according to claim 10, [characterised in that it  
2 additionally comprises] further comprising the [stage] step of mixing said alpha  
3 hydroxyl acids polymer or co-polymer phase with functional substances.

1 13. (Amended) The [P]process according to claim 10, [characterised in that it  
2 comprises the additional stage] further comprising the step of mixing said alpha  
3 [Hydroxi] hydroxy acids polymer or co-polymer phase with at least one of vitamins  
4 and[/or] amino acids.

Respectfully submitted,

Date: 11/5/01

  
J. Rodman Steele, Jr.  
Registration No. 25,931  
Mark D. Passler  
Registration No. 40,764  
Akerman, Senterfitt & Eidson, P.A.  
222 Lakeview Avenue, 4th Floor  
Post Office Box 3188  
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Telephone: (561) 653-5000

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